Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Billed Party Preference for 0+ InterLATA Calls	)	CC Docket No. 92-77

AT&T'S OPPOSITION TO PETITIONS FOR RECONSIDERATION

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SUMMARY

The OSPs' petitions for reconsideration merely rehash arguments that have been presented to the Commission many times over the past eighteen months. None of the OSPs' petitions raises any new facts or offers any valid reasons why the Commission should reverse its course and impose the costs of the 0+ public domain proposal upon millions of consumers. The OSPs' arguments have all been reviewed and rejected by the Commission, and, contrary to their claims, the Commission's decision is supported by detailed findings in the record. The OSPs' petitions for reconsideration should therefore be denied.

SWBT's petition for reconsideration should also be denied. That petition seeks to require AT&T to advertise the fact that AT&T cards can be used to place 0+ calls on the LECs' intraLATA networks. SWBT's petition raises issues which the Commission has found are outside the scope of this proceeding, and which are also beyond the Commission's jurisdiction. In all events, the LECs' own actions in marketing their competing calling cards demonstrate that the requested relief is unnecessary.

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Pursuant to the Commission's Public Notice dated February 24, 1993, AT&T submits its opposition to the Petitions for Reconsideration of the Commission's November 6, 1992 Order ("Order").[1]

After an exhaustive review of an extensive record,[2] the Commission concluded (Order ¶ 44) that adoption of the 0+ public domain concept "would not serve the public interest . . . [because] the customer inconvenience, frustration and potential cost it would impose would

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[1] Petitions for Reconsideration were filed by seven competitive Operator Service Providers ("OSPs"): the Competitive Telecommunications Association ("CompTel"), International Telecharge Incorporated ("ITI"), LDDS Communications, Inc. ("LDDS"), MCI Telecommunications Corporation ("MCI"), PhoneTel Technologies, Inc. ("PhoneTel"), Polar Communications and Value-Added Communications, Inc. ("VAC"). An eighth petition was filed by Southwestern Bell Telephone Company ("SWBT")

[2] The Appendices to the Order list 37 parties that filed pleadings in this docket and 24 parties that filed pleadings on CompTel's December 20, 1991 Motion for an Interim Order in Docket 91-115 (the "CompTel Motion"), whose record was incorporated for purposes of review of the 0+ public domain issue. (Order ¶ 3 n.3) In addition, the record includes scores of informal comments filed by other interested parties.

outweigh the benefits." The Order did, however, provide for "a more focused and narrowly tailored remedy," which the Commission found would best serve the public interest. (Id.) Specifically, the Order (¶ 57) directed AT&T:

> (i) to educate its proprietary cardholders to check the signs at payphones and use 0+ access only at phones identified as presubscribed to AT&T;
>
> (ii) to provide clear and accurate access code dialing instructions on its proprietary cards; and
>
> (iii) to make its 800 access code number easier to use.

The Commission (Order ¶ 2) found that these more limited requirements would resolve the immediate competitive issues raised by the OSPs "without the disadvantages of customer inconvenience and disruption the other proposed interim solutions would likely entail." AT&T has already fulfilled the Commission's requirements for its 800 access code number, and it has invested millions of dollars in educational programs that comply with the Commission's directives. These programs were approved by the Common

Carrier Bureau on February 4, 1993,[3] and are now being introduced into the marketplace.

I. THE OSPS' PETITIONS ARE BASELESS AND SHOULD BE REJECTED.

The OSPs' petitions for reconsideration merely rehash arguments that have already been briefed at least eight times in three different proceedings[4] and were reviewed and rejected in the Commission's Order. None of the OSPs offers any new facts or presents any valid reason why the Commission should now reverse its course and impose the costs of the 0+ public domain proposal upon millions of consumers.[5] Contrary to the OSPs' claims,[6] the Commission's

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[3] The Commission (Order, n.91) delegated to the Bureau the authority to review AT&T's materials and to order any necessary changes in content.

[4] The Order (¶ 2 n.1) notes that the 0+ public domain issue was initially raised in MCI's April 1991 comments and reply in CC Docket 91-35, which dealt with compensation for private payphone operators. MCI and other OSPs raised this issue again in their August 15, 1991 comments and September 16, 1991 replies in CC Docket 91-115 concerning LEC Joint Use Calling Cards. The issue was raised again in the CompTel Motion and briefed in comments filed on February 10, 1992 and replies filed on March 11, 1992. The issue was subsequently briefed twice more in this docket.

[5] The law is clear that reconsideration will not be granted "merely for the purpose of again debating matters on which the [deciding body has] already deliberated and spoken." American Broadcasting Companies, Inc., 90 F.C.C.2d 395, 401 (1982). See also AT&T Long Lines, 64 F.C.C.2d 958 (1977).

[6] See CompTel, p. 9; ITI, p. 2; LDDS, p. 7; MCI, p. 2; PhoneTel, p.3.

decision is supported by the record and strikes an appropriate balance among the interests of carriers and the calling public.[7] The OSPs' petitions for reconsideration should therefore be denied.

A. 0+ Dialing Is Consistent with the Issuance of Proprietary Cards.

Contrary to CompTel's claims (pp. 7-8, 14), the record shows that 0+ dialing is consistent with proprietary cards and that the operator services industry has never operated according to "an unstated principle of 0+ in the public domain". The only reason AT&T's old calling cards could be validated and accepted by its OSP competitors is because those AT&T cards shared account numbers with cards issued by the LECs.[8] Unlike the LECs, however, who have independent non-discrimination obligations to all IXCs because they provide monopoly access service, AT&T owes no such obligation to its OSP competitors.[9]

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[7] See Order ¶ 55. ("We find that consumer education . . . best balances the interests of AT&T's cardholders, AT&T's competitors, and AT&T.")

[8] See, e.g., AT&T's 92-77 Comments, p.4 n.**.

[9] See Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, 7 FCC Rcd. 3528, 3544 ("LEC Joint Use Card Order") (1992). With respect to the specific non-discrimination obligations of the Bell Operating Companies, see Modification of Final Judgment, § II(A). See also AT&T's 92-77 Reply, pp. 7-8. The existence of these independent obligations also refutes LDDS' claim (pp. 10-13) that the

(footnote continued on following page)

Furthermore, AT&T's new calling cards, like all other proprietary IXC cards, can only be used on a 0+ basis at telephones that have been presubscribed to AT&T. When AT&T's cards are used in this manner, the OSPs acknowledge that they create no difficulties for any carrier or customer.[10] Thus, AT&T's issuance of proprietary cards is completely consistent with the use of 0+ access from such phones.[11]

B. The Remedies Provided in the Order Are Adequate, and the Commission's Cost/Benefit Analysis Is Supported by the Record.

The OSPs' claim that the Order's remedies are inadequate and that the Commission's cost/benefit analysis

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(footnote continued from previous page)

Order is inconsistent with the Commission's rulings in the LEC Joint Use Card Order.

[10] CompTel Motion, p. 5.

[11] The OSPs' arguments concerning customer confusion that followed AT&T's issuance of CIID cards (see, e.g., CompTel, p. 3) disregard the confusion that the OSPs themselves created during the era of shared cards. The Commission has recently recognized that the OSPs caused such confusion by treating AT&T cardholders and others as "'captive' customers with little choice as to the interexchange carrier that [would] transport their long distance calls." Response of the Federal Communications Commission to Petitioner's Motion to Expedite, dated January 4, 1993, Capital Network Systems v. FCC, No. 92-1640, D.C. Cir., p.3. See also AT&T's February 10, 1992, Opposition to the CompTel Motion, p. 10; and AT&T's 92-77 Reply Comments, p. 3. This OSP indifference to customers required action by both the Commission and Congress to protect consumers' interests.

is flawed.[12] These assertions are contrary to the Commission's findings, which are supported by the record, as well as inconsistent with the OSPs' own statements and evidence.

The Commission found (Order ¶ 55) that the OSPs' concerns about processing costs for misdialed proprietary card calls could "easily be avoided by dialing instructions that clarify when, and under what circumstances, AT&T must be reached by dialing 0+, and when, and under what circumstances, AT&T must only be reached by dialing one of its access code sequences." This is not only correct but CompTel, the OSPs' industry association, itself acknowledges (p. 15 n.36) that appropriate education can reduce the incidence of misdialed calls to a "negligible" number. CompTel also states (p. 19) that "industry experience shows that with accurate and understandable dialing instructions, customers have little problem using access codes and proprietary cards."[13] Thus, the OSPs' statements support the Commission's findings on the effects of consumer education, and, in no event, provide any basis for a reconsideration of the Order.

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[12] See, e.g., CompTel, p. 11; ITI, p. 3; LDDS, p. 14 MCI, p. 2; PhoneTel, p. 6.

[13] See also the December 7, 1992 comments of AT&T (pp. 1-2), Sprint (p. 4) and U.S. Long Distance (p. 11) in this docket, which agree that the Commission's education requirements are likely to be effective.

The OSPs' also claim that the Order's requirements are inadequate to eliminate AT&T's alleged marketing advantages in competing for aggregators' presubscriptions.[14] This claim, however, ignores the Commission's finding that the 0+ public domain proposal would itself be ineffective in changing the competitive situation. First, the Commission recognized (Order ¶ 48) that customers who use proprietary cards have made their choice of carrier "before they reach the public telephone."[15] Second, the Commission noted (id.) that the OSPs' own evidence demonstrated that AT&T customers would likely use AT&T's access codes if it were necessary.[16] Thus, the Commission correctly concluded (id. ¶ 49) that the 0+ public domain proposal could not create parity in public phone presubscription.

Moreover, adoption of the 0+ public domain concept purely for the sake of "increas[ing] parity in the operator

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[14] E.g., CompTel, p. 10; MCI, p. 6.

[15] See 92-77 Reply Comments of the Colorado Office of Consumer Counsel ("Colorado OCC"), p. 3. ("[T]he [consumer's] choice [of carrier] is generally established by the card.") See also 92-77 Comments of SDN Users Association, and numerous ex parte letters, e.g., Letter to the Enforcement Division, Common Carrier Bureau from W.L. Gore & Associates, dated June 1, 1992 .

[16] In support of this finding, the Order (¶ 48) cites ITI's 92-77 Comments, p. 7, which state that three out of four AT&T customers offered the opportunity to provide an alternate billing mechanism to the OSP refuse to do so. See also id. ¶ 46, which recognizes that AT&T's success can be attributed in substantial part to factors such as service quality.

services market," (CompTel, p. 18) is not consistent with the role of the Commission, and, in all events, would simply handicap AT&T for the sake of its competitors.[17] Customers who want to place 0+ calls from any phone can readily obtain a LEC card or use other billing mechanisms such as commercial credit cards, collect calling or third party billing[18]. As noted by the Commission, AT&T CIID cards account for less than twenty five percent of all calling cards which are available for consumer use. [19] The record contains ample evidence that all OSPs can serve the callers who want to use their services, and there is no basis to find that AT&T's cards are necessary in order for the OSPs to compete in the marketplace.[20]

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[17] See Hawaiian Tel. Co. v. FCC, 498 F.2d 771, 776 (D.C. Cir. 1974) ("equalizing competition among competitors . . . is not the objective or role assigned by law to" the FCC (emphasis in original)), citing, FCC v. RCA Communications, Inc., 346 U.S. 86, 96-97 (1953).

[18] See Order ¶¶ 47-48. For example, there are over 50 million LEC issued cards which are available for use by all carriers. Order ¶ 24.

[19] Order, ¶ 21; AT&T 92-77 Reply Comments at ii.

[20] LDDS' assertion (pp. 12-13) that access to AT&T's proprietary card database is necessary because there are "no other suppliers" of validation information for AT&T's CIID cards is a tautology that is true of all proprietary databases, including those supporting MCI's and Sprint's proprietary cards. As the Commission found (Order ¶¶ 47-48), customers who wish to use OSPs' services have many other billing choices available to them, including LEC cards, commercial credit cards and collect and billed to third number calling.

The OSPs' challenges to the Commission's cost/benefit analysis[21] are similarly flawed. AT&T's decision to maintain the proprietary status of its new cards is consistent with the Commission's determination (Order ¶ 47) that proprietary IXC cards enhance competition:

> "IXC proprietary cards are a useful vehicle for permitting consumer choice of carrier. We agree with many of the commenters who note that the availability of both proprietary and nonproprietary cards enables greater consumer choice of carrier in the current presubscription environment." Id.

Any attempt to strip the proprietary feature from AT&T's new cards would unnecessarily burden consumers.[22]

Furthermore, the OSPs agree that 0+ dialed AT&T card calls create no problems at all at most public phones, because AT&T is the presubscribed carrier at most of those phones. CompTel, for example, admits that "[w]here AT&T is the presubscribed carrier . . . [AT&T CIID card] call[s] can go through without incident."[23] On the other hand, Bell Atlantic described how the 0+ public domain proposal would

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[21] See, e.g., CompTel, pp. 16-20; LDDS, pp. 8-9.

[22] See, Colorado OCC 92-77 Reply, pp. 2-3; Letter, Bob Starks, Florida House of Representatives, June 19, 1992. This fact was also confirmed by the various customers groups who wrote to the Commission on this issue. See, 92-77 Comments of SDN Users Association, pp. 2-3: Letter, Conference of Consumer Organizations, August 31, 1992; Letter, Petroleum Marketers Association of America, June 26, 1992

[23] CompTel Motion, p. 5.

cause needless inconvenience at least 20 million times a year at Bell Atlantic payphones alone.[24] Similarly, SWBT acknowledged that a mandatory access code requirement "would greatly inconvenience and frustrate customers."[25] The Commission correctly found (Order ¶ 45) that a 10XXX dialing requirement (or a 10-digit 800 number requirement if AT&T were required to reject 0+ calls[26]) for AT&T card calls placed from AT&T presubscribed phones would "be unnecessarily disruptive." This finding fully supports the Commission's cost/benefit analysis and its decision to reject the 0+ public domain proposal.

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[24] See Bell Atlantic's 92-77 Comments, p. 3.

[25] SWBT 92-77 Comments, p. 4.

[26] The OSPs' petitions ignore the undisputed fact that AT&T cannot distinguish between 0+ calls and calls dialed using its 10ATT access code. As a result, AT&T could not enforce an access code dialing requirement without blocking all 0+ AT&T card calls at all telephones and requiring its millions of cardholders only to use its 10-digit 800 number. Order ¶ 28; See also GTE 92-77 Comments at 2-3; SWBT 92-77 Comments at 6-7; USTA 92-77 Comments at 3.

C. AT&T's Cards Are Proprietary, and the MHAs Do Not Violate Title II.

Finally, some OSPs claim that AT&T's cards are not proprietary, while others assert that AT&T's Mutual Honoring Agreements with the LECs ("MHAs") violate Title II. These arguments also ignore the Commission's findings, and neither provides any basis for a reconsideration of the Order.

PhoneTel (p. 4) and LDDS (p. 5) assert that AT&T should be required to make its validation services available to all of its OSP competitors because the MHAs and certain other AT&T card honoring arrangements[27] demonstrate that AT&T's cards are not "truly proprietary." This argument misses the point. The defining attribute of all proprietary assets, including AT&T's proprietary card validation system, is the owner's right to control the use of those assets. Thus, the proprietary nature of AT&T's card validation system is not affected by the voluntary relationships AT&T

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[27] The only domestic IXCs permitted to honor AT&T's proprietary cards are Alascom and GTE Airfone. In the former case, the mutual honoring arises out of a mandatory joint service arrangement ("JSA") between AT&T and Alascom and the fact that AT&T's network does not serve Alaska outside of the context of the JSA. The arrangement with GTE Airfone is the result of AT&T's desire to give its cardholders the ability to use their cards to charge calls from aircraft equipped with GTE Airfone equipment. AT&T's network services are not available from such aircraft, and customers have no alternative service options available when they are on such aircraft.

has established for the use of that system. The Order (¶ 47) recognizes this fact and properly describes IXC proprietary cards as cards which "assure [customers] of being served only by the carrier of their choice, or by a carrier with whom that IXC chooses to enter into a business relationship."

The Commission also properly declined requests to use the MHAs as a reason to impose a non-discrimination obligation upon AT&T's card validation services. (See Order ¶ 59) The Order (¶ 63) correctly found that this subject is "beyond the scope of the issues in this proceeding, because it focuses upon the question of LEC/OSP competition for 0+ intraLATA traffic."[28] Moreover, as the Commission found (id. ¶ 62), imposition of a non-discrimination requirement on AT&T's validation system would cause significant structural changes to the operator services market by requiring AT&T to make its proprietary customer account information available to its direct competitors.

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[28] PhoneTel (p. 3 n.4) and LDDS (p. 6 n.13) are wrong in implying that the MHAs permit some LECs to accept the AT&T card for interLATA calls. In all cases, the MHAs restrict the LECs' use of the AT&T CIID card to local and intraLATA calls.

II. SWBT'S PETITION RAISES ISSUES BEYOND THE SCOPE OF THIS PROCEEDING, AND THE RELIEF IT SEEKS IS UNNECESSARY.

SWBT's petition asks the Commission to expand its consumer education requirements and order AT&T to inform its cardholders that their AT&T cards can be used on a 0+ basis to place local and intraLATA calls over the LECs' networks. SWBT's petition raises issues outside the scope of this proceeding, and SWBT offers no substantial basis to support its requested relief. SWBT's petition should be denied.

Unlike the OSPs, who argue that the MHAs are improper, SWBT seeks to require AT&T to advertise the effects of those agreements in a manner that would benefit the LECs' own services. This claim has no merit. The MHAs enable AT&T's cardholders to use their cards to place 0+ intraLATA calls on the LECs' networks when such calling is available. SWBT argues, in essence, that the existence of such voluntary agreements should create an affirmative duty upon AT&T to inform customers about this capability. As noted above, however, the Commission (Order ¶ 47) has acknowledged that an IXC that issues proprietary cards is entitled to establish its own "business relationship[s]" concerning the use of those cards. Thus, the scope of the MHA arrangements between AT&T and the LECs -- including the marketing/advertising requirements associated with those arrangements -- is properly a function of the negotiations between those companies, not of Commission order.

Furthermore, the issues raised by SWBT relate solely to competition for intrastate calls and the potential impact of AT&T's marketing messages on the LECs, subjects the Commission has properly held (Order ¶¶ 23, 63) are beyond the scope of this proceeding. In addition, the intrastate competition issues are beyond the scope of the Commission's jurisdiction.

In all events, SWBT failed to demonstrate any need for the requested relief. There is no evidence to support the contention that the LECs, who together issue twice as many calling cards as AT&T, cannot afford to advertise their own services. Indeed, SWBT's petition seeks an order that would require AT&T to provide marketing support for the LECs' services at the same time that the LECs are encouraging customers to use only their LEC-issued cards and not to use their AT&T cards at all.[29] Thus, the relief requested by SWBT is neither within the scope of this proceeding nor necessary, and SWBT's petition for reconsideration should be denied.

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[29] See Attachment A, which provides samples of current LEC advertisements that urge customers not to use AT&T cards.

CONCLUSION

For the reasons stated above, the petitions for reconsideration are meritless and should be denied.

Respectfully submitted,

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Dated: March 11, 1993

CERTIFICATE OF SERVICE

I, Valerie Harris, hereby certify that on this 11th day of March, 1993, a true copy of the foregoing "AT&T'S Opposition To Petitions For Reconsideration" was served by first class mail, postage prepaid, upon the parties on the attached list.

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